

Editor's note: appealed - aff'd Civ. No. 81-308 (D.Wyo. Feb. 3, 1982); aff'd in part, rev'd in part, No. 82-1445 (10th Cir. Nov. 7, 1983), 721 F.2d 694; cert. denied, 104 S.Ct. 2347, 466 US 972 (1984); also appealed - sub nom. Geosearch v. Watt, Civ.No. 81-305 (D.Wyo.) -- same history as Burr

DAVID BURR ET AL.

IBLA 81-49

Decided July 22, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, canceling overriding royalty interests in oil and gas lease W 62062, declaring the remaining interest to be held by a bona fide purchaser, and rejecting the unsuccessful drawees' offers.

Affirmed as modified and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

2. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser -- Words and Phrases

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

3. Notice: Constructive Notice -- Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchaser

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

APPEARANCES: David B. Kern, Esq., Milwaukee, Wisconsin, for David Burr and Resource Service Company, Inc.; Melvin Leslie, Esq., Salt Lake City, Utah, for Edward Kaliciak and Geosearch, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This is the second appeal involving issuance of the subject oil and gas lease to come before the Board. In the first case, the decision in which is titled, Geosearch, Inc., 41 IBLA 291 (1979), Geosearch, Inc. (Geosearch), 1/ argued that several oil and gas leases including the subject lease, W 62062, issued after a simultaneous drawing were invalid because BLM issued them to nonqualifying offerors. The offerors had all been parties to service agreements with a leasing service, Resource Service Company, Inc. (RSC). Many of RSC's service agreements had already been held to be violative of Departmental regulations regarding sole party in interest and multiple filings. Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). In that earlier appeal Geosearch asserted its right as successor to the second drawee to all interests in the leases not held by a bona fide purchaser.

In the prior decision the Board vacated the denial of the Geosearch protests and remanded the cases to the Wyoming State Office, Bureau of Land Management (BLM) for a determination whether the oil and gas lease offerors were disqualified by reason of regulatory violations and whether assignees of the lease interests were bona fide purchasers.

1/ The offerors receiving second priority in the drawing for these leases sold to Geosearch all or part of their interest in the leases. Because BLM had never rejected the second and third priority drawing entry cards, which is accomplished by returning them to the offerors, these offers remained viable. Therefore, Geosearch was allowed to protest the validity of the leases, even though several months had elapsed since their issuance. Geosearch, Inc., *supra* at 293.

On remand, BLM found that David L. Burr, the first drawee for parcel WY-149 in the November 1977 list of tracts available for simultaneously-filed oil and gas lease offers, filed his offer through RSC pursuant to an agreement which gave RSC an interest in the lease offer which must be disclosed under 43 CFR 3102.7 (1979) which requires the filing of separate statements by the offeror and the interested party within 15 days of filing the offer. Since these requirements were not met, the decision of BLM found the interests of Burr and RSC in the subject lease were null and void ab initio. 2/ BLM further held that RSC's unilateral waiver in January 1977 of its interest under such service agreement was ineffective to avoid the regulatory violation.

The BLM decision noted that the subject lease issued January 16, 1978, effective February 1, 1978, and was subject to an assignment of record title to Inexco Oil Company (Inexco) dated July 17, 1978, which was approved by BLM on August 31, 1978. This all occurred prior to the Geosearch protest filed with BLM on October 3, 1978. Based on these facts, the decision held that Inexco had established its status as a bona fide purchaser of the lease and that protestant had not refuted this status. Finally, BLM rejected the lease offers of the drawees receiving second and third priorities in the drawing.

The BLM decision on remand evoked this present appeal by four parties: David Burr, RSC, Edward Kaliciak (the second drawee), and Geosearch (the assignee of at least part of Kaliciak's interest).

Burr and RSC appeal the BLM findings that the service agreement between Burr and RSC gave RSC an interest in the lease offer, RSC's unilateral waiver of any interest created by the service agreement was ineffective as a matter of law, and Burr's and RSC's interests in the lease were void ab initio. Kaliciak and Geosearch appeal BLM's conclusion that Inexco, Burr's assignee, is a bona fide purchaser.

Reference to the filing agreement obtained by BLM on remand of the case discloses that Burr had authorized RSC to be his exclusive agent for the marketing of his interest in the Federal oil and gas lease he hoped to acquire in the November 1977 simultaneous drawing. Their agreement, executed in September prior to the drawing, required Burr to pay RSC commissions on all proceeds of the sale of the lease according to a set schedule. The commission extended to the reservation of overriding royalties as well as the initial consideration for sale of the lease. The commission applied to any sale, regardless of whether it was negotiated by RSC. This agency relationship was to last 5 years. This Board has previously considered similar situations

2/ The interest of Burr at this time had been reduced to an overriding royalty reserved in the assignment of record title to Inexco Oil Company. The interest of RSC consists of a portion of this reserved overriding royalty assigned to it by Burr pursuant to the terms of the service agreement.

involving RSC and its clients and has consistently held that this service agreement gives RSC an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979), and that the failure to disclose this interest is a violation of the regulations requiring rejection of the offer or cancellation of the lease. Inexco Oil Co., 54 IBLA 260 (1981); Wilbur G. Desens, 54 IBLA 271 (1981); Home Petroleum Corp., 54 IBLA 194, 88 I.D. 477 (1981); Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981); D. R. Weedon, Jr., 51 IBLA 378 (1980); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980), aff'd, Coyer v. Andrus, Civ. No. C78-104K, etc. (D. Wyo. Mar. 5, 1981); Frederick W. Lowey, 40 IBLA 381 (1979), aff'd, Lowey v. Watt, Civ. No. 79-3314 to 3319 (D.D.C. May 28, 1981). BLM has also had occasion to reject offers in which other leasing services held undisclosed interests, and we affirmed those decisions as well. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978).

The unilateral effort of RSC to disclaim the interest in the lease offer created by the agreement has been considered by the Board and held invalid for lack of communication of the waiver to the offeror ^{3/} or receipt of consideration to bind the contract. Wilbur G. Desens, supra at 276. Further, as the disclaimer was dated January 13, 1977, it was superseded by the agreement of September 27, 1977, between Burr and RSC which created the interest in the subject lease offer and the disclaimer would not apply to this case. Home Petroleum Corp., supra at 204, 88 I.D. at 484.

The allegation that the Department is estopped from canceling the lease because RSC relied on BLM's approval of the disclaimer at the time it was made as a means of eliminating the interest in lease offers must be rejected. This Board held in a similar case involving appellant RSC and the disclaimer at issue in this case, after an evidentiary hearing, that RSC had constructive and actual knowledge that BLM State office employees are subordinate level personnel without power to bind the Department, that their decisions are subject to reversal on review by the Secretary or his delegates, and, therefore, the essential element of reasonable reliance is missing. Donald W. Coyer (On Judicial Remand), supra at 313-14. We reaffirm our holding that the Department is not estopped from rejecting Burr's offer or from canceling the interests of Burr and RSC in the lease for the reasons stated in that decision. For the reasons stated in detail in our decision in D. R. Weedon, Jr., supra at 383-84, we must reject appellant's contention that the decision finding the waiver ineffective and canceling the interests of Burr and RSC in the lease for violation of the regulations regarding disclosure of other parties in interest constitutes an improper retroactive adjudication regarding the effectiveness of the waiver and the validity of the offers.

^{3/} The case file contains a copy of a letter from RSC to Burr dated Dec. 15, 1977, after the drawing, in which RSC purported to disclaim any interest in the lease offer. This could not have any effect, however, on the existence of an interest at the time the offer was filed.

Accordingly, the interests of Burr and RSC in the subject lease (now reduced to overriding royalties) are voidable and subject to cancellation (rather than void ab initio as stated by the BLM decision). Home Petroleum Corp., supra at 211-12, 88 I.D. at 488. On remand of this case, these interests should be canceled and sold pursuant to 43 CFR 3102.1-2(b). Home Petroleum Corp., supra at 211-13, 88 I.D. at 489.

[1, 2] The remaining issue presented is whether Inexco, the assignee from Burr of record title to the subject lease, qualifies as a bona fide purchaser of the lease. The interest in a Federal oil and gas lease held by a bona fide purchaser is not subject to cancellation even though the lease offer filed by a predecessor in title was defective and the lease was subject to cancellation when title was held by the predecessor. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2. A bona fide purchaser must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). Assignees who seek to qualify as bona fide purchasers are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment. Winkler v. Andrus, supra at 713.

Geosearch alleges that Inexco had actual or constructive knowledge of the service agreement between Burr and RSC which created the undisclosed interest in the lease offer and, therefore, that Inexco cannot qualify as a bona fide purchaser. Geosearch supports its contention by reference to a letter dated December 15, 1977, from Engle to Burr and an agency agreement dated December 15, 1977, executed by Engle, d.b.a. RSC, and Burr. Copies of both of these documents appear in the BLM lease file and are date stamped as received by BLM on January 9, 1978. The letter states in part that:

We are in the process of working with the Bureau of Land Management in an effort to determine if the Sales Agreement portion of our Service Agreement presents a "sole party in interest" question. There has been a suggestion that this clause possibly gives an interest to us in our client's leases. However, since starting business in 1973 we have taken the position that our Service Agreement makes the leases our clients' exclusive property and that we have no interest in the lease and that we are acting only as their agent for sale of their lease rights. To remove any doubt that our clients are in fact the exclusive owners of their leases and to protect their best interests we have informed the Bureau that we do not consider this exclusive clause binding if it created an interest in us. The Bureau has suggested that if the Sales Agreement is signed after the drawing there is no question presented.

I am therefore enclosing two copies of our Sales Agreement which I would appreciate your signing and return one copy to me, retaining the other for your files. Please note that the Sales Agreement spells out the same terms as provided in the Service Agreement. [Emphasis in original.]

[3] The test of constructive knowledge of a superior right is whether the facts are sufficient to cause an ordinarily prudent man to make further inquiry which if followed with reasonable diligence would lead to discovery of defects in title. Winkler v. Andrus, supra at 712; Southwestern Petroleum Corp. v. Udall, supra at 657. Although the Engle letter suggested a potential problem with Burr's lease offer, it was both dated and received by BLM prior to issuance of the subject oil and gas lease to Burr on January 16, 1978, effective February 1, 1978. Thus, BLM had the same knowledge at the time of adjudicating the lease offer and at the time did not find the offer defective. It is the responsibility of BLM to adjudicate lease offers and Inexco had a right to presume that BLM had properly discharged this duty. Inexco Oil Co., Inc., supra at 267; see Woods Petroleum Corp., 55 IBLA 348 (1981). No inquiry was initiated by BLM into the lease and no protest or other form of adverse proceeding challenging the lease was initiated prior to the assignment to Inexco and the approval of the assignment by BLM. Accordingly, the decision dismissing Inexco as a bona fide purchaser must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge